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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

ABBOTT LABORATORIES ET AL.,

Plaintiffs,

-against-

ADELPHIA SUPPLY USA ET AL.,

Defendants.

15 Civ. 05826 (CBA) (MDG)

**CONSENT JUDGMENT AND  
PERMANENT INJUNCTION**

On consent of Plaintiffs Abbott Laboratories, Abbott Diabetes Care Inc., and Abbott Diabetes Care Sales Corporation (collectively, "Abbott"), and Defendants Express Chemist (the named Defendant is Express Chemist which is the trading name of Paydens Limited, who is the actual party in interest), John Seal (Secretary for Express Chemist), Dennis Charles Pay (Director for Express Chemist), and Rosemary Elizabeth Ann Pay (Director for Express Chemist) (collectively, "Express Chemist"), it is hereby ORDERED, ADJUDGED AND DECREED:

WHEREAS, on October 9, 2015, Abbott filed its initial complaint in *Abbott Laboratories et al. v. Adelphia Supply USA et al.*, No. 15-CV-05826 (CBA) (MDG) (the "Action") in the United States District Court for the Eastern District of New York (the "Court"), asserting claims for, among other things, federal trademark infringement, federal and state trademark dilution, federal RICO and conspiracy to violate federal RICO, importation of goods bearing infringing marks, federal and state unfair competition, fraud and fraudulent inducement, aiding and abetting fraud, state unjust enrichment, and state deceptive business practices, and alleging that Express Chemist, without authorization from Abbott, imported, purchased, marketed, advertised, distributed, sold, offered for sale, submitted claims for rebates to be paid directly or indirectly by Abbott for, and otherwise used in commerce in the United States international FreeStyle® and FreeStyle Lite® blood glucose test strips ("International FreeStyle test strips"), all of which claims, Abbott has alleged, have given rise to significant damages; and

WHEREAS, in order to avoid the costs and expenses related to litigation, Abbott and Express Chemist wish to mutually release each other from certain liability and claims;

NOW THEREFORE, in consideration of the promises, releases, representations, and warranties set forth herein, the sufficiency of which is acknowledged by all parties to this Consent Judgment, Abbott and Express Chemist agree to be bound.

1. Express Chemist, along with its principals, members, servants, employees, directors, officers, parents, successors, heirs, assigns, executors, representatives, and subsidiaries, and all other persons in active concert and participation with them are permanently enjoined from selling, importing into the United States, submitting claims for rebates to be paid directly or

indirectly by Abbott for, or in any way distributing or selling in United States commerce, any International FreeStyle test strips designated for and diverted from the international market into the United States. "International FreeStyle test strips" as understood in this Consent Judgment includes any box of FreeStyle test strips bearing any of the following marks (the "FreeStyle Marks"):

- FREESTYLE (Reg. No. 3,111,863);
- FREESTYLE LITE (Reg. No. 3,488,499);
-  , which consists of a butterfly with a silver body, black wings, yellow and orange oblong shapes on the wings with two rows of white spots going around the oblong shapes and with blue shading (Reg. No. 4,210,535);
- ABBOTT (Reg. Nos. 3,724,557; 3,842,268; 3,842,269; 4,023123); and
-  (Reg. Nos. 1,542,129);

and having any of the following characteristics on its box or package insert:

- Indicates that a blood sample for use with the test strips can be drawn from a location other than the finger, palm, or upper arm;
- Lacks a National Drug Code (NDC) number;
- Lacks the U.S. toll-free phone number 1-888-522-5226;
- Bears the "CE" mark; or
- The primary language is not English.
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2. Nothing in paragraph 1 shall restrict Express Chemist or others from buying, selling, importing, marketing, distributing, submitting rebate claims for, or in any way using in United States commerce any FreeStyle test strips that are marketed or sold by Abbott for use in the United States.

3. As used herein, the "Effective Date" shall mean one business day after the last of the following to occur:

- (a) the receipt by Abbott of Express Chemist's settlement payment; or

(b) the filing of this Consent Judgment.

4. Beginning on the Effective Date, Express Chemist shall maintain complete records of its purchases and U.S. sales of products bearing any of the Freestyle Marks for a period of four years. If Abbott has and provides Express Chemist with documentation reasonably establishing Express Chemist has violated the prohibitions of this Consent Judgment in any way, Express Chemist shall provide Abbott with documentation for all U.S. sales of products bearing any of the FreeStyle Marks. If Express Chemist is found by the court to have violated the prohibitions of this Consent Judgment, Abbott shall have the right, upon at least thirty days prior written notice, and subject to a confidentiality agreement to be agreed upon by the parties, to have an independent firm audit Express Chemist's records of purchases and U.S. sales of products bearing any of the FreeStyle Marks. Abbott's right to such an audit shall not be exercised more than once in any twelve month period and this right shall permanently terminate on November 9, 2020.

5. Express Chemist may not invest in, control, own, or participate in any business knowing it violates any term of this Consent Judgment.

6. If Express Chemist is found by the court to have violated the prohibitions of this Consent Judgment or has failed to maintain complete records of their violations, Abbott is entitled at its election to liquidated damages of \$150 per 50-count box of International FreeStyle test strips and \$300 per 100-count box of International FreeStyle test strips that Express Chemist sells (or have sold on their behalf by their agents, servants, employees, subsidiaries, and all other persons in active concert and participation with them who aid and abet Express Chemist in violating this Consent Judgment) that violate this Consent Judgment; or to Abbott's actual, statutory, and punitive damages. In the event it is determined Express Chemist has violated this Consent Judgment and Express Chemist has failed to maintain complete records of their violations, all U.S. sales of FreeStyle test strips by Express Chemist within the period of Express Chemist's record-keeping failure shall be considered FreeStyle sales in violation of this Consent Judgment and shall be subject to Abbott's damages election. In any action, regardless of which measure of damages Abbott selects, they shall be entitled to recover their attorneys' fees and investigator fees for finding and demonstrating that Express Chemist has violated this Consent Judgment and otherwise incurred in connection with obtaining, enforcing, and collecting an award of damages. All liability will be joint and several among the defendants that comprise Express Chemist.

7. In addition to other remedies, including damages, for contempt of this Consent Judgment, in the event of breach or violation by Express Chemist along with its principals, members, servants, employees, directors, officers, parents, successors, heirs, assigns, executors, representatives, and subsidiaries, and all other persons in active concert and participation with them who aid and abet Express Chemist in violating this Consent Judgment, Abbott is entitled to a preliminary and permanent injunction against the breaching conduct upon a showing of a possibility of success of establishing that such a breach occurred.

8. Abbott and Express Chemist each agree that jurisdiction and venue for an action for contempt of this Consent Judgment exists in the United States District Court for the Eastern District of New York. In such an action, Express Chemist shall waive any and all

defenses based upon personal jurisdiction, subject matter jurisdiction, and venue.

9. Express Chemist agrees to reasonably cooperate with Abbott's request for assistance with the prosecution of the Action against others. Express Chemist also agrees to cooperate with Abbott's reasonable request to assist Abbott in the prosecution of any future pleading, discovery, or action related to the subject matter of the Action. Express Chemist further agrees to alert Abbott to any future sales or purchases of International FreeStyle test strips in the United States of which Express Chemist becomes aware. The cooperation contemplated by this paragraph shall include Express Chemist notifying Abbott about and sharing any information Express Chemist possesses or comes to possess in the future concerning the sale, offer for sale, and/or use in commerce in the United States of International FreeStyle test strips.

10. Express Chemist hereby assigns to Abbott any and all of Express Chemist's claims, demands, causes of action, damages, accounts, reckonings, costs, expenses, and actions of any nature whatsoever on account of, or arising out of the subject matter of the Action, which Express Chemist now has, owns, or holds, or at any time may hereafter have, own, or hold against any other defendant or non-party to the Action, or otherwise relating to Express Chemist's exportation, distribution, sale, offer for sale, and/or use in commerce in the United States of International FreeStyle test strips. This includes, but is in no way limited to, claims for indemnity or contribution.

11. This Consent Judgment is entered pursuant to Rule 58 of the Federal Rules of Civil Procedure, and this Action is hereby dismissed, with prejudice, only as to the named defendants Express Chemist, John Seal, Dennis Charles Pay, and Rosemary Elizabeth Ann Pay, without costs or attorneys' fees, save that this District Court shall retain jurisdiction over this action, including, without limitation, over implementation of or disputes arising out of this Consent Judgment with regard to Express Chemist or its principals, members, servants, employees, directors, officers, parents, successors, heirs, assigns, executors, representatives, and subsidiaries. Abbott, in addition to any award of damages or injunctive relief, shall be entitled to an award of attorneys' fees and costs and investigators' fees and costs in connection with a violation of this order by Express Chemist or its principals, members, servants, employees, directors, officers, parents, successors, heirs, assigns, executors, representatives, and subsidiaries.

12. Express Chemist hereby states that it has agreed to this Consent Judgment solely to avoid further litigation. In no event shall this Consent Judgment or any negotiations leading thereto be construed, deemed, or asserted to be evidence of an admission or a concession on the part of any party to this Consent Judgment of any fault or liability or damages whatsoever. To the extent allowable by law, this Consent Judgment shall have no precedential value or effect and shall not be admissible in any other action or proceeding, except in any action or proceeding to enforce this Consent Judgment, any action or proceeding contemplated by the terms of this Consent Judgment, or any action or proceeding relating to any contemporaneous Agreement among the parties to this Consent Judgment.

13. Signatures to this Consent Judgment transmitted electronically or by facsimile shall be deemed original.

Dated: November 9, 2016

CONSENTED AND AGREED TO BY:

Express Chemist

By: DENNIS CHARLES PAY

John Seal

By: JOHN SEAL

Dennis Charles Pay

By: DENNIS CHARLES PAY

Rosemary Elizabeth Ann Pay

By: Rosemary E A Pay

By: ROSEMARY ELIZABETH ANN PAY

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Attorneys for Abbott Laboratories, Abbott Diabetes Care  
Inc., and Abbott Diabetes Care Sales Corporation

SO ORDERED:

s/Carol Bagley Amon

UNITED STATES DISTRICT JUDGE

11/16/18